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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,184	11/12/2003	Dennis J. Sammut	SAMMUT-07597	6125
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Casimir Jones, S.C. 440 Science Drive Suite 203 Madison, WI 53711				
EXAMINER				
CLEMENT, MICHELLE RENEE				
ART UNIT		PAPER NUMBER		
3641				
MAIL DATE		DELIVERY MODE		
10/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/706,184

Applicant(s)

SAMMUT ET AL.

Examiner

Michelle (Shelley) Clement

Art Unit

3641

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-87 is/are pending in the application.
- 4a) Of the above claim(s) 48, 49, 55-72, 81-83 and 85-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-47, 50-54, 73-80, 84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vertical and horizontal cross-hairs **connected** to form a grid must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 53 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 53 recites "said vertical [] cross-hairs", it is not clear which vertical cross-hairs are being referenced in that applicant has previously recited both **secondary** vertical cross hairs and **primary** vertical cross hairs. Correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 45, 46, 47, 50-54, 73, 75-80 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (US Patent # 4,695,161) in view of Murdoch (US Patent # 4,263,719). Reed discloses a ballistics calculator system for computing targeting information to hit a target, comprising a processor, the processor comprising a ballistics computer program for analyzing information to accurately aim a firearm at a target using a target acquisition device with a reticle,

the program using information regarding the target acquisition device and reticle being used, wherein the type of target acquisition device and reticle comprise, a reticle comprising a plurality of visible secondary horizontal cross-hairs at predetermined distances along a primary visible vertical cross-hair and a plurality of visible secondary vertical cross-hairs at predetermined distances along at least some of the visible secondary horizontal cross-hairs and an output using the visible secondary horizontal cross-hairs and visible secondary vertical cross-hairs to identify an aiming point for hitting the target. The reticle comprises a visible primary vertical and visible horizontal cross-hair. At least some of the visible secondary horizontal and visible vertical cross-hairs are evenly spaced and are connected to form a grid. Information regarding the target acquisition device and reticle being used can include the positional relationship between the target acquisition device and the firearm. The device further comprises a housing, means for mounting the housing in a fixed predetermined position relative to a firearm. The target acquisition device further comprises an objective lens mounted in one end of the housing and an ocular lens mounted in an opposite end. The target acquisition device further comprises a projected image and is configured to display information on a display screen, wherein the information displayed is an image of a reticle. The reticle is in the focal plane. Reed discloses the plurality of cross-hairs wherein the non-activated lines are *essentially* invisible (i.e. not completely invisible, the lines are LCD which can always be faintly seen) but does not expressly disclose wherein the plurality of cross-hairs are simultaneously visible, selected from the group consisting of etched, engraved, and printed cross-hairs, and the primary vertical and horizontal cross-hairs intersect at the optical center of the reticle, Murdoch does. Murdoch teaches a reticle comprising a plurality of simultaneously visible secondary horizontal cross-hairs formed by

etching intersecting at predetermined distances a *simultaneously* visible primary vertical cross-hair, and a plurality of *simultaneously* visible secondary vertical cross-hairs intersecting at predetermined distances at least some of the secondary horizontal cross-hairs. The cross hairs form a grid. Because both references teach reticles for sighting devices, it would have been obvious to one skilled in the art to substitute one reticle for the other to achieve the predictable result of increasing the number of cross-hairs on a reticle. Murdoch further teaches a target acquisition device and reticle, wherein the reticle comprises primary vertical and horizontal cross-hairs that intersect at an optical center of the reticle and wherein at least some of the secondary horizontal and vertical cross-hairs have identifying marks, the reticle further including range finding marks on the reticle. Murdoch and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the position of the reticle and identifying marks as taught by Murdoch with the device as taught by Reed. The suggestion/motivation for doing so would have been to obtain a sighting system that included the range determining features for more accurate aiming as suggested by Murdoch.

7. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed and Murdoch as applied to claim 45 above, and further in view of Cohen (US Patent # 5,375,072). Although Reed does not expressly disclose that the device comprises an elevation knob and the system providing an output of how much the knob should be turned to adjust a position of the target acquisition device relative to the firearm, Cohen does. Cohen teaches the processor and the target acquisition device being separate units wherein the processor provides an output informing the user how much a windage knob must be turned to adjust a position of the target

acquisition device so that an intersection of the primary vertical cross-section and the primary horizontal cross-hair can be used as the aiming point. Cohen and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the separation of components as taught by Cohen with the device as taught by Reed, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and Cohen specifically teaches the components separately.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3641

/Michelle (Shelley) Clement/
Primary Examiner, Art Unit 3641